



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB4204

by Rep. Tom Demmer

#### SYNOPSIS AS INTRODUCED:

20 ILCS 105/4.04

from Ch. 23, par. 6104.04

Amends the Illinois Act on the Aging. Provides that the Governor shall appoint, and the Senate shall confirm, a State Long Term Care Ombudsman (rather than the Office of State Long Term Care Ombudsman shall be composed of at least one full-time ombudsman). Provides that the State Long Term Care Ombudsman shall be appointed for a term of 4 years and shall function within the Department on Aging and shall report to the Director and the Governor. Provides that the State Long Term Care Ombudsman shall function independently within the Department with respect to the operations of the Office, including the performance of investigations and issuance of findings and recommendations. Provides that the appropriation for the Office of State Long Term Care Ombudsman shall be separate from the overall appropriation for the Department.

LRB099 11551 KTG 32994 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Act on the Aging is amended by  
5 changing Section 4.04 as follows:

6 (20 ILCS 105/4.04) (from Ch. 23, par. 6104.04)

7 Sec. 4.04. Long Term Care Ombudsman Program. The purpose of  
8 the Long Term Care Ombudsman Program is to ensure that older  
9 persons and persons with disabilities receive quality  
10 services. This is accomplished by providing advocacy services  
11 for residents of long term care facilities and participants  
12 receiving home care and community-based care. Managed care is  
13 increasingly becoming the vehicle for delivering health and  
14 long-term services and supports to seniors and persons with  
15 disabilities, including dual eligible participants. The  
16 additional ombudsman authority will allow advocacy services to  
17 be provided to Illinois participants for the first time and  
18 will produce a cost savings for the State of Illinois by  
19 supporting the rebalancing efforts of the Patient Protection  
20 and Affordable Care Act.

21 (a) Long Term Care Ombudsman Program. The Department shall  
22 establish a Long Term Care Ombudsman Program, through the  
23 Office of State Long Term Care Ombudsman ("the Office"), in

1 accordance with the provisions of the Older Americans Act of  
2 1965, as now or hereafter amended. The Long Term Care Ombudsman  
3 Program is authorized, subject to sufficient appropriations,  
4 to advocate on behalf of older persons and persons with  
5 disabilities residing in their own homes or community-based  
6 settings, relating to matters which may adversely affect the  
7 health, safety, welfare, or rights of such individuals.

8 (b) Definitions. As used in this Section, unless the  
9 context requires otherwise:

10 (1) "Access" means the right to:

11 (i) Enter any long term care facility or assisted  
12 living or shared housing establishment or supportive  
13 living facility;

14 (ii) Communicate privately and without restriction  
15 with any resident, regardless of age, who consents to  
16 the communication;

17 (iii) Seek consent to communicate privately and  
18 without restriction with any participant or resident,  
19 regardless of age;

20 (iv) Inspect the clinical and other records of a  
21 participant or resident, regardless of age, with the  
22 express written consent of the participant or  
23 resident;

24 (v) Observe all areas of the long term care  
25 facility or supportive living facilities, assisted  
26 living or shared housing establishment except the

1 living area of any resident who protests the  
2 observation; and

3 (vi) Subject to permission of the participant or  
4 resident requesting services or his or her  
5 representative, enter a home or community-based  
6 setting.

7 (2) "Long Term Care Facility" means (i) any facility as  
8 defined by Section 1-113 of the Nursing Home Care Act, as  
9 now or hereafter amended; and (ii) any skilled nursing  
10 facility or a nursing facility which meets the requirements  
11 of Section 1819(a), (b), (c), and (d) or Section 1919(a),  
12 (b), (c), and (d) of the Social Security Act, as now or  
13 hereafter amended (42 U.S.C. 1395i-3(a), (b), (c), and (d)  
14 and 42 U.S.C. 1396r(a), (b), (c), and (d)); and any  
15 facility as defined by Section 1-113 of the MR/DD Community  
16 Care Act, as now or hereafter amended.

17 (2.5) "Assisted living establishment" and "shared  
18 housing establishment" have the meanings given those terms  
19 in Section 10 of the Assisted Living and Shared Housing  
20 Act.

21 (2.7) "Supportive living facility" means a facility  
22 established under Section 5-5.01a of the Illinois Public  
23 Aid Code.

24 (2.8) "Community-based setting" means any place of  
25 abode other than an individual's private home.

26 (3) "State Long Term Care Ombudsman" means any person

1 employed by the Department to fulfill the requirements of  
2 the Office of State Long Term Care Ombudsman as required  
3 under the Older Americans Act of 1965, as now or hereafter  
4 amended, and Departmental policy.

5 (3.1) "Ombudsman" means any designated representative  
6 of the State Long Term Care Ombudsman Program; provided  
7 that the representative, whether he is paid for or  
8 volunteers his ombudsman services, shall be qualified and  
9 designated by the Office to perform the duties of an  
10 ombudsman as specified by the Department in rules and in  
11 accordance with the provisions of the Older Americans Act  
12 of 1965, as now or hereafter amended.

13 (4) "Participant" means an older person aged 60 or over  
14 or an adult with a disability aged 18 through 59 who is  
15 eligible for services under any of the following:

16 (i) A medical assistance waiver administered by  
17 the State.

18 (ii) A managed care organization providing care  
19 coordination and other services to seniors and persons  
20 with disabilities.

21 (5) "Resident" means an older person aged 60 or over or  
22 an adult with a disability aged 18 through 59 who resides  
23 in a long-term care facility.

24 (c) Ombudsman; appointment. The Governor shall appoint,  
25 and the Senate shall confirm, a State Long Term Care Ombudsman.  
26 The State Long Term Care Ombudsman shall be appointed for a

1 term of 4 years and shall function within the Department and  
2 shall report to the Director and the Governor. The Office of  
3 State Long Term Care Ombudsman ~~rules. The Office of State Long~~  
4 ~~Term Care Ombudsman shall be composed of at least one full-time~~  
5 ~~ombudsman and~~ shall include a system of designated regional  
6 long term care ombudsman programs. Each regional program shall  
7 be designated by the State Long Term Care Ombudsman as a  
8 subdivision of the Office and any representative of a regional  
9 program shall be treated as a representative of the Office.

10 The State Long Term Care Ombudsman shall function  
11 independently within the Department with respect to the  
12 operations of the Office, including the performance of  
13 investigations and issuance of findings and recommendations.  
14 The appropriation for the Office of State Long Term Care  
15 Ombudsman shall be separate from the overall appropriation for  
16 the Department.

17 The Department, in consultation with the Office, shall  
18 promulgate administrative rules in accordance with the  
19 provisions of the Older Americans Act of 1965, as now or  
20 hereafter amended, to establish the responsibilities of the  
21 Department and the Office of State Long Term Care Ombudsman and  
22 the designated regional Ombudsman programs. The administrative  
23 rules shall include the responsibility of the Office and  
24 designated regional programs to investigate and resolve  
25 complaints made by or on behalf of residents of long term care  
26 facilities, supportive living facilities, and assisted living

1 and shared housing establishments, and participants residing  
2 in their own homes or community-based settings, including the  
3 option to serve residents and participants under the age of 60,  
4 relating to actions, inaction, or decisions of providers, or  
5 their representatives, of such facilities and establishments,  
6 of public agencies, or of social services agencies, which may  
7 adversely affect the health, safety, welfare, or rights of such  
8 residents and participants. The Office and designated regional  
9 programs may represent all residents and participants, but are  
10 not required by this Act to represent persons under 60 years of  
11 age, except to the extent required by federal law. When  
12 necessary and appropriate, representatives of the Office shall  
13 refer complaints to the appropriate regulatory State agency.  
14 The Department, in consultation with the Office, shall  
15 cooperate with the Department of Human Services and other State  
16 agencies in providing information and training to designated  
17 regional long term care ombudsman programs about the  
18 appropriate assessment and treatment (including information  
19 about appropriate supportive services, treatment options, and  
20 assessment of rehabilitation potential) of the participants  
21 they serve.

22 The State Long Term Care Ombudsman and all other ombudsmen,  
23 as defined in paragraph (3.1) of subsection (b) must submit to  
24 background checks under the Health Care Worker Background Check  
25 Act and receive training, as prescribed by the Illinois  
26 Department on Aging, before visiting facilities, private

1 homes, or community-based settings. The training must include  
2 information specific to assisted living establishments,  
3 supportive living facilities, shared housing establishments,  
4 private homes, and community-based settings and to the rights  
5 of residents and participants guaranteed under the  
6 corresponding Acts and administrative rules.

7 (c-5) Consumer Choice Information Reports. The Office  
8 shall:

9 (1) In collaboration with the Attorney General, create  
10 a Consumer Choice Information Report form to be completed  
11 by all licensed long term care facilities to aid  
12 Illinoisans and their families in making informed choices  
13 about long term care. The Office shall create a Consumer  
14 Choice Information Report for each type of licensed long  
15 term care facility. The Office shall collaborate with the  
16 Attorney General and the Department of Human Services to  
17 create a Consumer Choice Information Report form for  
18 facilities licensed under the MR/DD Community Care Act.

19 (2) Develop a database of Consumer Choice Information  
20 Reports completed by licensed long term care facilities  
21 that includes information in the following consumer  
22 categories:

23 (A) Medical Care, Services, and Treatment.

24 (B) Special Services and Amenities.

25 (C) Staffing.

26 (D) Facility Statistics and Resident Demographics.

1 (E) Ownership and Administration.

2 (F) Safety and Security.

3 (G) Meals and Nutrition.

4 (H) Rooms, Furnishings, and Equipment.

5 (I) Family, Volunteer, and Visitation Provisions.

6 (3) Make this information accessible to the public,  
7 including on the Internet by means of a hyperlink labeled  
8 "Resident's Right to Know" on the Office's World Wide Web  
9 home page. Information about facilities licensed under the  
10 MR/DD Community Care Act shall be made accessible to the  
11 public by the Department of Human Services, including on  
12 the Internet by means of a hyperlink labeled "Resident's  
13 and Families' Right to Know" on the Department of Human  
14 Services' "For Customers" website.

15 (4) Have the authority, with the Attorney General, to  
16 verify that information provided by a facility is accurate.

17 (5) Request a new report from any licensed facility  
18 whenever it deems necessary.

19 (6) Include in the Office's Consumer Choice  
20 Information Report for each type of licensed long term care  
21 facility additional information on each licensed long term  
22 care facility in the State of Illinois, including  
23 information regarding each facility's compliance with the  
24 relevant State and federal statutes, rules, and standards;  
25 customer satisfaction surveys; and information generated  
26 from quality measures developed by the Centers for Medicare

1 and Medicaid Services.

2 (d) Access and visitation rights.

3 (1) In accordance with subparagraphs (A) and (E) of  
4 paragraph (3) of subsection (c) of Section 1819 and  
5 subparagraphs (A) and (E) of paragraph (3) of subsection  
6 (c) of Section 1919 of the Social Security Act, as now or  
7 hereafter amended (42 U.S.C. 1395i-3 (c) (3) (A) and (E) and  
8 42 U.S.C. 1396r (c) (3) (A) and (E)), and Section 712 of the  
9 Older Americans Act of 1965, as now or hereafter amended  
10 (42 U.S.C. 3058f), a long term care facility, supportive  
11 living facility, assisted living establishment, and shared  
12 housing establishment must:

13 (i) permit immediate access to any resident,  
14 regardless of age, by a designated ombudsman;

15 (ii) permit representatives of the Office, with  
16 the permission of the resident's legal representative  
17 or legal guardian, to examine a resident's clinical and  
18 other records, regardless of the age of the resident,  
19 and if a resident is unable to consent to such review,  
20 and has no legal guardian, permit representatives of  
21 the Office appropriate access, as defined by the  
22 Department, in consultation with the Office, in  
23 administrative rules, to the resident's records; and

24 (iii) permit a representative of the Program to  
25 communicate privately and without restriction with any  
26 participant who consents to the communication

1           regardless of the consent of, or withholding of consent  
2           by, a legal guardian or an agent named in a power of  
3           attorney executed by the participant.

4           (2) Each long term care facility, supportive living  
5           facility, assisted living establishment, and shared  
6           housing establishment shall display, in multiple,  
7           conspicuous public places within the facility accessible  
8           to both visitors and residents and in an easily readable  
9           format, the address and phone number of the Office of the  
10          Long Term Care Ombudsman, in a manner prescribed by the  
11          Office.

12          (e) Immunity. An ombudsman or any representative of the  
13          Office participating in the good faith performance of his or  
14          her official duties shall have immunity from any liability  
15          (civil, criminal or otherwise) in any proceedings (civil,  
16          criminal or otherwise) brought as a consequence of the  
17          performance of his official duties.

18          (f) Business offenses.

19                  (1) No person shall:

20                          (i) Intentionally prevent, interfere with, or  
21                          attempt to impede in any way any representative of the  
22                          Office in the performance of his official duties under  
23                          this Act and the Older Americans Act of 1965; or

24                          (ii) Intentionally retaliate, discriminate  
25                          against, or effect reprisals against any long term care  
26                          facility resident or employee for contacting or

1 providing information to any representative of the  
2 Office.

3 (2) A violation of this Section is a business offense,  
4 punishable by a fine not to exceed \$501.

5 (3) The State Long Term Care Ombudsman shall notify the  
6 State's Attorney of the county in which the long term care  
7 facility, supportive living facility, or assisted living  
8 or shared housing establishment is located, or the Attorney  
9 General, of any violations of this Section.

10 (g) Confidentiality of records and identities. The  
11 Department shall establish procedures for the disclosure by the  
12 State Ombudsman or the regional ombudsmen entities of files  
13 maintained by the program. The procedures shall provide that  
14 the files and records may be disclosed only at the discretion  
15 of the State Long Term Care Ombudsman or the person designated  
16 by the State Ombudsman to disclose the files and records, and  
17 the procedures shall prohibit the disclosure of the identity of  
18 any complainant, resident, participant, witness, or employee  
19 of a long term care provider unless:

20 (1) the complainant, resident, participant, witness,  
21 or employee of a long term care provider or his or her  
22 legal representative consents to the disclosure and the  
23 consent is in writing;

24 (2) the complainant, resident, participant, witness,  
25 or employee of a long term care provider gives consent  
26 orally; and the consent is documented contemporaneously in

1 writing in accordance with such requirements as the  
2 Department shall establish; or

3 (3) the disclosure is required by court order.

4 (h) Legal representation. The Attorney General shall  
5 provide legal representation to any representative of the  
6 Office against whom suit or other legal action is brought in  
7 connection with the performance of the representative's  
8 official duties, in accordance with the State Employee  
9 Indemnification Act.

10 (i) Treatment by prayer and spiritual means. Nothing in  
11 this Act shall be construed to authorize or require the medical  
12 supervision, regulation or control of remedial care or  
13 treatment of any resident in a long term care facility operated  
14 exclusively by and for members or adherents of any church or  
15 religious denomination the tenets and practices of which  
16 include reliance solely upon spiritual means through prayer for  
17 healing.

18 (j) The Long Term Care Ombudsman Fund is created as a  
19 special fund in the State treasury to receive moneys for the  
20 express purposes of this Section. All interest earned on moneys  
21 in the fund shall be credited to the fund. Moneys contained in  
22 the fund shall be used to support the purposes of this Section.

23 (k) Each Regional Ombudsman may, in accordance with rules  
24 promulgated by the Office, establish a multi-disciplinary team  
25 to act in an advisory role for the purpose of providing  
26 professional knowledge and expertise in handling complex

1 abuse, neglect, and advocacy issues involving participants.  
2 Each multi-disciplinary team may consist of one or more  
3 volunteer representatives from any combination of at least 7  
4 members from the following professions: banking or finance;  
5 disability care; health care; pharmacology; law; law  
6 enforcement; emergency responder; mental health care; clergy;  
7 coroner or medical examiner; substance abuse; domestic  
8 violence; sexual assault; or other related fields. To support  
9 multi-disciplinary teams in this role, law enforcement  
10 agencies and coroners or medical examiners shall supply records  
11 as may be requested in particular cases. The Regional  
12 Ombudsman, or his or her designee, of the area in which the  
13 multi-disciplinary team is created shall be the facilitator of  
14 the multi-disciplinary team.

15 (Source: P.A. 97-38, eff. 6-28-11; 98-380, eff. 8-16-13;  
16 98-989, eff. 1-1-15.)